



Legislative Bulletin.....December 16, 2005

Contents:

H.R. 4437 — Amendments 1-21 to the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 (The first 3 were also included in the December 15th list of 15 amendments).

H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, is scheduled to be considered again on the House floor on Friday, December 16, 2005, subject to a structured rule (H. Res. 621). The rule makes in order only those amendments printed in the Rules Committee report accompanying the resolution. Below are the summaries of the amendments made in order under the rule. Summaries are based on RSC staff's review of actual amendment text. For a summary of the underlying bill, see a separate RSC document released yesterday.

1. Goodlatte (R-VA)/Herseth (D-SD): Eliminates the visa lottery program, as of October 1, 2006 (the first day of fiscal year 2007). Each year, the State Department's National Visa Center holds a lottery to allot 50,000 immigrant visas to winners randomly chosen. These immigrants come from countries with low rates of immigration to the United States (less than 50,000 immigrants to the U.S. in the last five years). Anyone selected under this lottery is given the opportunity to apply for permanent residence, which if granted, allows him or her to live and work permanently in the U.S., and bring a spouse and any unmarried children under the age of 21 to the U.S. (For more information see: <http://uscis.gov/graphics/howdoi/divlott.htm>.)

According to one of the amendment's sponsors, the State Department's Inspector General testified before Congress this year that the Office of Inspector General continues to believe that the program "contains significant risks to national security from hostile intelligence officers, criminals, and terrorists attempting to use the program for entry into the United States as permanent residents." **(Agreed to by recorded vote)**

2. Filner (D-CA): Amends U.S. Code to ensure that people who distribute or intend to distribute counterfeit immigration documents, also face the same criminal penalties as people who falsify, forge, or produce counterfeit immigration documents. The changes to current law made by the Filner amendment are shown in red bold below

18 U.S.C. 1546

Sec. 1546. Fraud and misuse of visas, permits, and other documents

- (a) Whoever knowingly forges, counterfeits, alters, or **distributes (or intends to distribute)**, falsely makes any immigrant or nonimmigrant visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, or utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, knowing it to be forged, counterfeited, altered, or **distributed**, falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained; ...

Shall be fined under this title or imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense), or both. ... **(Agreed to by voice vote)**

3. Hayworth (R-AZ): Eliminates the 4th preference family visa category (which currently allows up to 65,000 visas per year) and increases the number of employment-based immigrant visas by 65,000 (from 140,000 per fiscal year to 205,000). Under current law, U.S. citizens who are at least 21-years old can apply to bring their siblings to live permanently in the U.S. (For more information see: <http://uscis.gov/graphics/howdoi/sibling.htm>). While the sponsor's summary implies his amendment only eliminates adult siblings, the actual text of the amendment eliminates all sibling visas (which are available for siblings of any age). The effect of the amendment on the current sibling visa provision is shown in red bold:

8 U.S.C. 203(a)(4)

Sec. 1153. Allocation of immigrant visas

~~(4) Brothers and sisters of citizens~~

~~Qualified immigrants who are the brothers or sisters of citizens of the United States, if such citizens are at least 21 years of age, shall be allocated visas in a number not to exceed 65,000, plus any visas not required for the classes specified in paragraphs (1) through (3).~~

According to the sponsor, "If the U.S. economy needs more workers, we should admit more legal immigrant workers. More than 70% of our green cards each year go to family members of previous immigrants. We should reprioritize our immigration system to attract more worker-immigrants. My amendment would do that by eliminating Adult Siblings visas. The numerical allocation for these visas would be shifted to employment-based permanent visas."
(Withdrawn)

4. Sensenbrenner (R-WI): Manager's Amendment.

- Makes technical changes to the underlying bill;
- Extends the voluntary relocation program by five years; provides for a fine or up to 10 years in prison for anyone that knowingly enters into a marriage, or misrepresents the circumstances of a marriage, for the purpose of evading immigration laws;
- Provides for mandatory minimum and maximum penalties for repeated marriage fraud (according to the sponsor, this is at the Administration's request);

- Replaces the section of the bill that creates a special task force for coordinating fraudulent immigration documents and replaces it with authorization to establish a new Forensic Document Laboratory to accomplish basically the same task;
- Provides for increased penalties for trafficking in passports;
- Including producing, issues, making false statements about, or forging a passport;
- Provides for additional penalties for knowingly defrauding an alien, including falsely representing oneself as an attorney for immigration law purposes or defrauding alien that is applying for immigration benefits;
- Updates the law that criminalizes passport and immigration fraud by increasing penalties to facilitate effective enforcement;
- Establishes a new pilot program to improve the coordination of intelligence by DHS relating to the southwest international border, to last at least two years; authorizes such sums as necessary to carry out the provision;
- Prohibits localities from requiring businesses to set up day labor sites as a condition for conducting or expanding a business;
- Requires the Attorney General to report on the status of criminal alien prosecutions, including prosecutions of smugglers;
- Removes reference to aggravated felonies and substitutes language referring to length of sentence, for sentencing enhancements for aliens who enter illegally after convictions. Clarifies that the Board of Immigration Appeals' decisions on motions to reopen are discretionary decisions that are not subject to judicial review;
- Amends the law that provides for detention of criminal defendants to make the defendants' immigration status an express consideration in determining whether the defendant should be released on bond;
- Extends the statute of limitations for all immigration-related frauds to ten years. Makes passport fraud a ground of inadmissibility and deportability;
- Clarifies and reaffirm existing limits on federal courts' jurisdiction to review removal orders pertaining to certain criminal aliens as well as discretionary decisions by the Attorney General and Secretary of Homeland Security; and
- Abolishes attorneys' fee awards to removable aliens under the Equal Access to Justice Act. **(Agreed to by voice vote)**

5. Price (R-GA): Amends the definition of “operation control” contained in the underlying bill. Changes are noted in **red bold**.

“In this section, the term “operation control” means the prevention of **~~the entry into the United States of all unlawful entries into the United States, including entries by~~** terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.”

In addition, the amendment requires that within one year after enactment and annually thereafter, the Secretary shall submit to a report to Congress on the progress made toward achieving and maintaining operational control over the entire international land and maritime borders of the United States.

Finally, the amendment adds to the items to be included in the National Strategy for Border Security's report to Congress, “an assessment of all legal requirements that prevent achieving

and maintaining operation control over the entire international land and maritime borders of the United States.”

According to the sponsor, “the amendment is designed to set a hard deadline to achieve operational control and clarifies the definition to prevent all unlawful entries into the United States. ...the amendment gives the Federal government a specific goal to get the current crisis under control. Illegal entries into the United States will not be tolerated.” **(Agreed to by voice vote)**

6. Stearns (R-FL): Prohibits the Secretary of DHS, the Attorney General, and all courts from:

- granting or ordering the grant of adjustment of status of an alien to that of an alien lawfully admitted for permanent residence
- granting or ordering the grant of any other status, relief, protection from removal, or other benefit under the immigration laws, or
- issuing any documentation evidencing or related to such grant by the Secretary, the Attorney General, or any court,

until the following conditions are met:

- the IBIS check on the alien has been initiated at a Treasury Enforcement Communications System access level of no less than Level 3,
- results from the check have been returned,
- any derogatory information has been obtained and assessed, and until any other background and security checks have been completed as the Secretary may require; and
- any suspected or alleged fraud relating to the granting of any status (including the granting of adjustment of states), relief, protection from removal, or other benefit under this subsection ahs been fully investigated and found to be unsubstantiated.

According to the sponsor, “current law requires background checks of alien applicants, but the law doesn't specifically require these security checks to be completed before government benefits are actually handed out. So, while [the 9/11] terrorists were waiting for the results of their background checks, they were able to receive these crucial benefits. By the time we finally discovered something questionable in their background, it was too late. ...[the] amendment will prohibit the Department of Homeland Security (DHS), the U.S. Attorney General, and all courts from granting any kind of legal immigration status or benefits to an alien until, at a minimum, the alien’s name is first completely checked against a database of criminal records and terrorist watchlists, using the Treasury Enforcement Communications System (TECS) database.” **(Agreed to by recorded vote)**

7. Sensenbrenner #133 (R-WI): Reduces, at the Administration’s request, the maximum sentence for illegal entry and illegal presence to six months (current law), which was modified to one year and a day in the underlying bill. **(Recorded Vote Requested)**

8. Velazquez (D-NY): Authorizes a **new pilot program** to reduce “by the greatest extent practicable” the backlog of immigrant benefit applications and preventing the backlog from reoccurring. The pilot program initiatives “may include” *increasing* or transferring personnel to areas with the greatest backlog, streamlining regulations, upgrading information technology, and *increasing* the number of immigration service centers. The text does not authorize any specific funding. The amendment also requires the U.S. Citizenship and Immigration Services (USCIS), within six months of the bill’s enactment, to reduce the immigration application processing backlog. **(Agreed to by voice vote)**

9. Norwood (R-GA):

- Clarifies federal law by explicitly stating that states and their political subdivisions have the inherent authority of a sovereign entity to investigate, identify, apprehend, arrest, detain, or transfer to federal custody aliens in the U.S. while enforcing immigration laws in the course of carrying out the routine duties;
- Directs DHS to establish a training manual and pocket guide for law enforcement on the above matter;
- Directs DHS to make training of state and local law enforcement officers available “thorough as many means as possible” at no cost to local agencies (provided with federal funds);
- Provides DHS grants to states and its subdivisions for equipment, technology, facilities, and other products that are directly related apprehending immigrant law violators; authorizes to be appropriated \$250 million each fiscal year;
- Directs DHS to continue to operate and implement the Institutional Removal (IRP) program, which identifies removable criminal aliens in the federal and state correctional facilities and removes such aliens from the U.S. after completion of their sentences;
- Authorizes state and local law enforcement officers to detain an illegal alien up to 14 days after the alien’s completed prison sentence, in order to effectuate the transfer of the alien to federal custody;
- Authorizes to be appropriated for the institutional removal program: \$100 million for FY07, 115 million for FY08, \$130 million for FY09, \$145 million for FY10, and \$160 million for FY11;
Increases the State Criminal Alien Assistance Program (SCAAP) authorization to \$1 billion (House passed SCAAP reauthorization levels are \$750 million for FY06, \$850 for FY07, and \$950 for FY08-FY11); and
- Directs DHS to provide the National Crime Information center of the DoJ with information on aliens: 1) that have been issued a final order of removal, 2) that have signed a voluntary departure agreement, 3) overstayed their authorized period of stay, or 4) whose visas have been revoked.

Note: the first two sections of the amendment are substantially the same as legislation that has passed the House as components of other legislation (H.R. 1817 and H.R. 1279, respectively). **(Recorded Vote Requested)**

10. Tancredo (R-CO): Prohibits the Attorney General from entering into a contractual arrangement with a state or political subdivision or allocating funds under the State Criminal

Alien Assistance Program to any state or local government which “has in place any formal or informal policy” (often referred to as a “sanctuary policy”) that violates 8 U.S.C. 1373. That section of law is shown below. The amendment also requires the Attorney General to report annually to Congress on any state or political subdivision (local government) that “violates the section below.

8 USC Sec. 1373. Communication between government agencies and the Immigration and Naturalization Service

(a) In general

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) Additional authority of government entities Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

(1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.

(2) Maintaining such information.

(3) Exchanging such information with any other Federal, State, or local government entity.

(c) Obligation to respond to inquiries

The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.

(Withdrawn)

11. Nadler (D-NY) #104: Strikes section 407 of the bill regarding expedited removal; this provision allows for of undocumented immigrants in the U.S. apprehended at or between an international land border or within 100 miles of that border. **(Withdrawn)**

12. Myrick (R-NC) #79: Amends section 606 of the bill to require the removal of an unauthorized (illegal) alien on the first conviction of drunk driving (instead of the third conviction as the base bill provides for; allows for the state to be reimbursed by DHS for the detainment and transport of aliens convicted of this crime.

13. Shadegg (R-AZ): Increases the penalty (from not more than 25 years) to at least 25 years for document fraud committed to facilitate an act of international terrorism. The amendment also provides for increased penalties for other forms of document fraud (committed by aliens who are unlawfully present in the U.S.), including:

- not more than 40 years (up from 20) for fraud in connection with drug trafficking;
- not more than 20 years (up from 10) for fraud not in connection with drug trafficking or terrorism;
- not more than 25 years (up from 15) for more 3 subsequent fraud charges; and

- not more than 10 years (up from 5) for fraud using a false identification to obtain employment.

In addition, the amendment imposes a sentence of at least 5 years for crimes of violence or drug trafficking offenses committed by aliens who are unlawfully present in the U.S.

According to the sponsor, “increasing criminal penalties for fraudulent visas, border crossing cards, and other documents – in conjunction with improved technology – is necessary to deter document fraud and improve border security.”

14. Shadegg (R-AZ): Adds human trafficking and human smuggling to the list of predicate acts under the federal money laundering statute.

According to the sponsor, “human smuggling organizations [bring] in an estimated \$10 billion in profits each year. ...Immigration and Customs Enforcement personnel believe targeting the monetary assets of these rings is a key strategy to combating human smuggling and human trafficking.”

15. Westmoreland (R-GA) #129:

- Sets caps on the monetary penalties set forth in Title VII of the bill for hiring or employing unauthorized aliens of \$7,500 for first time offenses, \$15,000 for second offenses, and \$40,000 for all subsequent offenses;
- Provides an exemption from the above stated penalty, “if the violator establishes that it was the first such violation of such provision by the violator and the violator acted in good faith;” and
- Waives liability for violation of the above provisions for contractors if their subcontractor employees an unauthorized alien unless the contractor knew the employee hired was an unauthorized alien.

16. Gonzalez (D-TX) #109:

- Strikes section 706(1) of the bill regarding INA penalties; adds a new section regarding civil penalties for hiring, recruiting, and referral violations of an unauthorized alien; specifically, it provides for a civil penalty of up to \$50,000 for each violation; and
- Distributes the funds collected from all violations noted above as follows:
 - 1) 25 percent to the state in which the alien is located,
 - 2) 25 percent to the county in which the alien is located;
 - 3) 25 percent to the municipality (if any) in which the alien is located, or the county if no municipality exists (the remaining 25 percent would be retained by the federal government); the underlying bill provides for a \$5,000 for the first offense, and does not provide for redistribution to the state and localities affected.

17. Bradley (R-NH) #31: Requires DHS to provide a report to Congress, within one year of enactment, on the progress and problems associated with implementation of the Employment Eligibility Verification System, including information related to the most efficient use of the system by small business.

18. Sullivan (R-OK) #1: Adds a new title to the bill entitled “Secure our Nation’s Interior,” which makes the following changes to current law:

- Amends the Immigration and Nationality Act to revise expedited removal provisions to:
 - apply these provisions to aliens who have not been physically present in the United States continuously for the one-year (current law is two years) period immediately prior to the date of determination of inadmissibility; and
 - exempt from such authority an alien who has been charged with a crime, is in criminal proceedings, or is serving a criminal sentence.
- Provides that state and local law enforcement personnel have the inherent authority of a sovereign entity to apprehend, arrest, detain, or transfer to federal custody aliens in the United States (including the transportation of such aliens across state lines to detention centers) in the enforcement of U.S. immigration laws (substantially similar to a provision in the Norwood amendment);
- Directs, upon a Governor’s or an appropriate local official’s request, the Secretary of the DHS to:
 - take an illegal alien into federal custody, or request that the relevant state or local law enforcement agency temporarily incarcerate or transport the alien for transfer to federal custody; and
 - designate at least one federal, state, or local prison, or a private contracted prison or detention facility within each state as the central facility for that state to transfer custody of aliens to DHS.
- Directs DHS to reimburse the states and localities for “all reasonable expenses...incurred by a state or locality in the incarceration and transportation of illegal aliens.” The provided compensation is to be the average cost of incarceration of a prisoner in the relevant state, plus the cost of transporting the criminal or illegal alien from the point of apprehension, to the place of detention, and to the custody transfer point if the place of detention and place of custody are different (substantially similar to a provision in the Norwood amendment);
- Directs the Secretary of DHS to ensure that illegal aliens incarcerated in federal facilities under this section, are held in facilities in which provide an appropriate level of security;
- Allows the Secretary of DHS to establish a regular circuit and schedule for the prompt transfer of apprehended illegal aliens from the custody of states and localities to federal custody. The Secretary is permitted to enter into contracts with state and local law enforcement, private entities, and detention official to implement these provisions;
- Directs the Secretary of DHS to establish a **new program** to collect and maintain a record of each admission for every alien arriving in the United States. The program is designed to verify the identify of every arriving and departing alien by comparing in real time the biometric identifier on such alien’s travel or entry document or passport with arriving departing alien. Directs the Secretary to submit a report to Congress detailing the additional resources, including machine readers and personnel, that are needed at each port on entry, based on recent and anticipated volumes of admissions at the ports of entry;

- Provides that: (1) aliens (including alien crewmen) seeking admission or readmission to or transit through the United States must be inspected by immigration officers; (2) no alien may be admitted to the United States without having been processed through the automated entry-exit control system; and (3) such system shall verify the identity of every arriving and departing alien by comparing in real time the biometric identifier on such alien's travel or entry document or passport with the arriving or departing alien.

19. Ryan (R-GA): Makes the Oath of Renunciation and Allegiance federal law (it is currently only an agency regulation), so that the oath cannot be changed without an act of Congress. The oath reads:

“I hereby declare on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject of citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by law; that I will perform noncombatant service in the Armed Forces of the United States when required by law; that I will perform work of national importance under civilian direction when required by law; and that I take this obligation freely without any mental reservation or purpose of evasion; so help me God.”

The amendment also provides that upon the naturalization of a new citizen, the Secretary of DHS, is to notify the embassy of the country of which the new citizen was a citizen or subject that such citizen has:

- Renounced allegiance to that foreign country; and sworn allegiance to the U.S.

20. Royce (R-GA): Adds a new Title to the bill entitled “Elimination of Corruption and Prevention of Acquisition of Immigration Benefits Through Fraud;”

- States Congressional findings, including:
 1. “the mission of the U.S. Citizenship and Immigration Services (USCIS) is to faithfully execute the immigration laws enacted by Congress and to ensure that only those aliens who are eligible under such laws and who do not pose a risk to the U.S. or its citizens or lawful residents are able to obtain permission to remain in the U.S.
 2. “Only U.S. citizens have an absolute right to be in the U.S.; for all others, permission to enter and reside here, either as non-immigrants or immigrants, is a privilege that is conditioned on following the rules on one’s admission and stay;”
- Provides that the Director of the Office of Security and Investigations shall report directly to the Director of USCIS.
- Provides that the Director of the Office of Security and Investigations (within USCIS) has the sole authority (partial list):
 1. To receive, process dispose of administratively, and investigate any criminal or noncriminal violations of the Immigration and Nationality Act (INA) that may have been committed by any employee or agent of USCIS;
 2. To ensure that all complaints alleging violations are handed consistently
 3. To have access to all records that are available to USCIS;

4. To require by subpoena all information and documents necessary in the performance of duties; and
 5. To enter into contracts and arrangements for audits, studies, analyses, and other services with public agencies and with private persons (to the extent and in such amounts as may be provided in advance by immigration fee accounts).
- Provides that, upon request of the Director for information or assistance, the head of any federal agency will furnish such information; also provides that should information not be provided as requested, the Director must report the incident to the Director of USCIS;
 - Directs the Director of USCIS to provide the Office of Security and Investigations with appropriate and adequate office space at central and field office locations of USCIS, along with the necessary equipment and supplies;
 - Allows the DHS Secretary to authorize the Director, Deputy Director, Assistant Director of Security Operations, the Assistant Director of Special Investigations, all 1811-series criminal investigators, certain 1801-series investigative management specialists, and security specialists supervised by such assistant directors to:
 - 1) carry a firearm while engaged in official duties; and
 - 2) make an arrest without a warrant while engaged in official duties
 - 3) seek and execute warrants for arrest, search of a premises, or seizure of evidence issued under the authority of the U.S. upon probable cause to believe a violation has occurred.
 - Directs the DHS Secretary to promulgate guidelines which shall govern the exercise of the above mentioned law enforcement powers;
 - Provides that the DHS Secretary may rescind or suspend the above mentioned powers authorized for the Director upon a determination by the Secretary that the exercise of these powers by that Director (or certain other individual named above) has not complied with the guidelines;
 - Provides that the Office of Security and Investigations of USCIS has the authority:
 - 1) to conduct fraud detection operations, including mining and data analysis
 - 2) to investigate any criminal or noncriminal allegations of violations of the INA
 - 3) to turn over to a U.S. Attorney for prosecution evidence that tends to establish such violations
 - 4) to engage in information sharing , partnerships, and other collaborative efforts with any federal, state, local law enforcement entities, foreign partners, or entities within the intelligence community;
 - Directs the Director of the Office of Security and Investigations, for FY07-FY10 and subject to the availability of security fees, to increase the number of full-time, active-duty GS-1811 series criminal investigators by at least 100, along with support personnel and equipment (above the number of those positions that were funded for the preceding fiscal year);
 - Directs the Director of the Office of Security and Investigations, for FY08 and subject to the availability of security fees, increase the number of full-time, active-duty GS-1801 series investigations and compliance officers by at least 150, along with support personnel and equipment (above the number of those positions that were funded for the preceding fiscal year);

- Directs the Director of the Office of Security and Investigations, for FY08 and subject to the availability of security fees, to increase the number of full-time, active-duty GS-0132 series intelligence research specialists by at least 150, along with support personnel and equipment (above the number of those positions that were funded for the preceding fiscal year);
- Requires the Director of the Office of Security and Investigations to submit an annual report to Congress detailing the activities of the Office, and stipulates certain items to be included in the report;
- Prohibits the DHS Secretary, the Attorney General, or any court from:
 - 1) granting or ordering the granting of adjustment of status to that of an alien lawfully admitted for permanent residence;
 - 2) granting or ordering the granting of any other status, relief, protection from removal, or other benefit under the immigration laws, or
 - 3) issuing any documentation evidencing or related to such grant by the Attorney General, the Secretary, or any court,

until any suspected or alleged fraud relating to the benefit application has been fully investigated and found to be unsubstantiated.
- Directs the DHS Secretary to eliminate the Fraud Detection and National Security Office of USCIS and transfer all authority to the Office of Security and Investigations;
- Directs the DHS Secretary to charge each alien who files an application for adjustment of status or an extension of stay a security fee of \$10, which shall be made available to the Office of Security and Investigations to conduct investigations into allegations of internal corruption and benefits fraud;
- Directs the DHS Secretary to charge each alien who files an application for an immigrant or nonimmigrant visa a security fee of \$10, which shall be made available to the Office of Security and Investigation to conduct investigations into allegations of internal corruption and benefits fraud.

20. Gerlach (R-GA): The sponsor has withdrawn this amendment.

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